

E-filed 3/30/06

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	Case No. C-05-00743-JF
)	
Plaintiff,)	
)	
v.)	<u>[revised proposed] DECREE OF SALE</u>
)	
FELIX KELLY PRAKASAM, et al.,)	
)	
Defendants.)	

On March 24, 2006, the United States' Motion for Summary Judgment and request for order of sale came before United States District Jeremy Fogel.

Having reviewed the pleadings and good cause appearing, IT IS ORDERED,

1. Pursuant to 28 U.S.C., §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, the Court rules and orders as follows:

2. Felix Kelly Prakasam owns the real property located at 1174 San Diego Drive, Salinas, California 93901, and described in the Official Records in the office of the County Recorder, Monterey County, California, describing the real property as follows:

Lot 16, in Block 7, as shown on map entitled "Tract No. 457, Unit No. 2, Claremont Manor Addition No.2", Monterey County, California, filed May 5, 1964 in Volume 8 of Maps, "Cities and Towns", at page 14, Monterey County Records.

A.P.N. 016-261-16

1 3. The United States' tax lien for the 1997 tax year is valid and subsisting and
2 attaches to the real property located at 1174 San Diego Drive, Salinas, California, as described in
3 paragraph 2 above (hereinafter "1174 San Diego Drive"). 26 U.S.C. §7403 entitles the United
4 States to enforce those liens against such real property in order to satisfy the 1997 tax liabilities
5 of Felix Kelly Prakasam.

6 4. The United States Marshal for the Northern District of California, or such
7 representative as he may appoint or employ, is authorized and directed under 28 U.S.C. §§ 2001
8 and 2002 to offer for public sale and to sell the 1174 San Diego Drive real property. This order
9 shall act as a special writ of execution and no further orders or process from the Court shall be
10 required to authorize or empower the United States Marshal, or his representative, to take any
11 and all steps necessary to fully implement this order.

12 5. The United States Marshal or his representative is authorized to have free access
13 to the 1174 San Diego Drive real property and to take all actions necessary to preserve the realty,
14 including without limitation retaining a locksmith or other person to change or install locks or
15 other security devices on any party of the realty, until the deed to the realty is delivered to the
16 ultimate purchaser(s) of the realty.

17 6. The terms and conditions of the sale of the 1174 San Diego Drive real property
18 are:

19 a. The sale shall be free and clear of all interests of Felix Kelly Prakasam;
20 Liliana P. Prakasam; Wells Fargo Home Mortgage, a division of Wells Fargo Bank N.A.; State
21 of California Franchise Tax Board; ANCO Financial Inc.; General Electric Capital Corporation;
22 Credit Counseling Services Inc.; and the United States of America in the real property.

23 b. The sale shall be subject to any lease, building lines if established, all
24 laws, ordinances and governmental regulations (including building and zoning regulations),
25 affecting the premises, and easements and restrictions of record, if any.

26 c. The public sale of the property shall be held either at the courthouse of the
27 county, parish, or city in which such property is located, or on the premises.

1 d. The date and time for the sale is to be announced by the United States
2 Marshal or his representative.

3 e. Notice of the sale shall be published once a week for a least four (4)
4 consecutive weeks before the sale in at least one newspaper regularly issued and of general
5 circulation in the county, state, or judicial district of the United States where the property is
6 situated and, at the direction of the United States Marshal or his representative, by any other
7 notice that he or his representative deems appropriate. Each notice shall contain a description of
8 the property and shall contain the terms and conditions of sale in this order.

9 f. The successful bidder(s) of the real property shall be required to deposit at
10 the time of sale with the United States Marshal or his representative \$10,000.00, with the deposit
11 to be made by certified check or cash. Before being permitted to bid at either sale, bidders shall
12 display to the United States Marshal, or his representative, proof that they are able to comply
13 with this requirement. No bids will be received from any person who has not presented proof
14 that, if he or she is the successful bidder, he or she can make the deposit required by this order.

15 g. The balance of the purchase price for each parcel of realty is to be paid to
16 the United States Marshal within sixty (60) days after the date the bid is accepted by a certified or
17 cashier's check payable to the United States Marshall for the Northern District of California. If
18 the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to
19 cover the expenses of sale, including commissions due under 28 U.S.C. § 1921(c), with any
20 remaining part retained by the United States as part of the proceeds of the sale to be applied to
21 the tax liabilities at issue herein, or at the election of the United States, the bidder shall be liable
22 to the United States, on a subsequent sale of the property, for all net losses incurred by the United
23 States as a result of such failure, and the realty shall be again offered for sale under the terms and
24 conditions of the order and decree.

25 h. The sale of the real property shall be subject to confirmation by this Court.
26 On confirmation of the sale of realty the United States Marshal shall execute and deliver a quit
27 claim deed conveying the realty to the purchaser of such realty. On confirmation of the sale, the
28 realty shall be discharged and free from all interests in, liens against, or claims to, the realty that

1 are held or asserted by plaintiff or any of the defendants in this action.

2 7. Until the 1174 San Diego Drive Way real property is sold by the United States
3 Marshal, Felix Kelly Prakasam shall take all reasonable steps necessary to preserve such property
4 (including all buildings, improvements, fixtures and appurtenances on the realty) in its current
5 condition. He shall not commit waste against the property, nor shall they cause anyone else to do
6 so. He shall not do anything that tends to reduce the value or marketability of the property, nor
7 shall he cause anyone else to do so.

8 8. Defendant Felix Kelly Prakasam shall not record any instruments that may
9 directly or indirectly tend to adversely affect the value of the property.

10 9. When the sale of the 1174 San Diego Drive real property is confirmed by this
11 Court, the Monterey County Recorder shall permit transfer of such realty to be reflected on that
12 county's register of title.

13 10. Within thirty (30) days after the sale of the 1174 San Diego Drive real property is
14 confirmed by this Court, the United States Marshal shall distribute the amount paid by the
15 purchaser as follows:

16 a. First, the Marshal shall retain an amount sufficient to cover the expenses
17 of the sale, including the commission due under 28 U.S.C. §1921(c) and including an amount
18 sufficient to cover the expenses of any steps taken to secure or maintain the realty pending sale
19 and confirmation by the Court.

20 b. Second, any remaining funds shall be paid to the Wells Fargo Home
21 Mortgage, a division of Wells Fargo Bank NA in satisfaction of the Deed of Trust dated January
22 15, 1997 in favor of Community Lending Inc., which Deed of Trust is now held by Wells Fargo
23 Bank NA.

24 c. Third, any remaining funds shall be paid to the ANCO Financial Inc., in
25 satisfaction of the Deed of Trust filed May 14, 1999 in favor of ANCO Financial Inc., and
26 against Felix Kelly Prakasam.

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28 ///

1 d. Fourth, any remaining funds shall be paid to the United States of America
2 to be applied to the 1997 tax liability of Felix Kelly Prakasam and Lilian P. Prakasam.

3 e. Fifth, any remaining funds shall be paid to Felix K. Prakasam.

4 DATED this 30th day of March, 2006

5 BY THE COURT:

6 
7 _____
8 HONORABLE JEREMY FOGEL
9 United States District Judge

CERTIFICATE OF SERVICE

I, **KATHY P. TAT** declare:

That I am a citizen of the United States of America and employed in San Francisco County, California; that my business address is Office of United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102; that I am over the age of eighteen years, and am not a party to the above-entitled action.

I am employed by the United States Attorney for the Northern District of California and discretion to be competent to serve papers. The undersigned further certifies that I caused a copy of the following:

[Revised proposed] DECREE OF SALE

to be served this date upon the party(ies) in this action by placing a true copy thereof in a sealed envelope, and served as follows:

 X **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

 PERSONAL SERVICE (BY MESSENGER)

 FACSIMILE (FAX) No.: _____

to the parties addressed as follows:

PLEASE SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on **March 24, 2006** at San Francisco, California.

/s/ Kathy Tat
KATHY P. TAT
Legal Assistant

SERVICE LIST

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